

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE HORNED DORSET
PRIMAVERA INC

Debtor

CASE NO. 15-03837 ESL

CHAPTER 11

**MOTION REQUESTING THE AUDIT OF DEBTOR BY THE STATE
INSURANCE FUND CORPORATION**

TO THE HONORABLE COURT:

COMES NOW, the State of Insurance Fund Corporation (hereinafter SIF), through its subscribing attorney and very respectfully alleges and prays as follows:

1. That the present bankruptcy proceeding was filed on May 22, 2015.
2. That the SIF did filed Proof of Claim 13.1, on September 9, 2015 in the amount of \$54,574.65. The SIF attaches a copy of a recent certification of indebtedness as exhibit 1 related to the Patron Workmen's Compensation Insurance Policy number 8713000037 that demonstrates the indebtedness of said insurance policy only covers up to year 2014 in the amount of \$11,692.75. The debtor has no Patron Workmen's Compensation Insurance policy, in effect for year 2015 and 2016, as to said insurance policy.
3. The debtor is operating see operating report filed on June 8, 2016, docket 182, page 15 and 17 that establishes that the debtor is operating.
4. That the plan has not been approved as of this date and/or the disclosure statement. The debtor is operating his business as aforementioned and has not

paid the Patron Workmen's Compensation Insurance Premiums required by the Puerto Rico Workmen's Compensation Act, herein Law 45 of April 18, 1935 amended herein denominated WAC. Furthermore the debtor has to obtain and put in effect a Patron Workmen's Compensation Insurance Policy for year 2016, as required by WAC.

5. That the SIF moves the Honorable Court for an order authorizing an audit of debtor as to what it payed its employees in salaries for years 2015 and 2016. It is recommended by the SIF that the debtor present himself and/or by appropriate representation duly qualified before the SIF to the office of the Liquidation, Division of the SIF and/or the Formalization Division of Mayaguez, Puerto Rico and present the documental information as to the salaries the debtor paid its employees during year 2015 and 2016. Said documental evidence is the appropriate form filed by the debtor before the Department of Labor, of the Government of Puerto Rico, duly sealed for year 2015 and 2016 that reflect the salaries the debtor paid its employees during said year 2016. The debtor should also file the Annual Payroll Statement before the SIF, that it had to do on July 20, 2015 and failed to filed said Annual Payroll Statement before the SIF in order that the SIF could then proceed to calculate the indebtedness of year 2016, bill the debtor for said year and if paid properly by the debtor issue the Patron Workmen's Insurance Policy.

6. That after the debtor presents the aforementioned document and/or information to the SIF, the SIF can then proceed with the audit to calculate the indebtedness of the Patron Workmen's Compensation Insurance Premium

indebted by the debtor under the Puerto Rico Workmen's Accident Compensation Act 45 law of April 18, 1935, WAC for year 2016 to the SIF.

7. Worker's Compensation Insurance Policy Premiums have been construed as taxes owed to governmental units within the scope of the Bankruptcy Code and therefore allowable and payable as administrative expenses under the provisions of 11 U.S.C. 503 (b) (1) (A).¹

8. Its payment is a necessary cost or expense of preserving the estate inasmuch as it is a requirement of doing business in Puerto Rico. The lack of payment thereof renders the employer liable not only for the payment of the premiums owed and for the costs and expenses incurred in the treatment and rehabilitation of its injured employees, but also deprives the employer from the immunity afforded as established in WAC².

9. The debtor is in violation of Act No. 45 of April 18, 1935, Section 18, as amended and pursuant to the mandate of said aforementioned local statute that requires and employer to have a compulsory form of Workmen's Compensation Insurance Premiums paid and in effect as it relates to year 2016, before the fact that the debtor is operating and has employees. WAC establishes said compulsory form of Workmen's Compensation Insurance Policy to care and compensate employees injured, disabled or dead in work related situations, while insulating insured employers from liability for the accidents suffered by their employees See Section 20 of Act No. 45 of April 18, 1935 by not having paid the Insurance Policy for year 2016. The debtor is presently without Patron Workers

¹ See *In re Pan American Paper Mills, Inc.*, 618 F.2d 159 (1st Circuit) 1980.

² Act No. 45 of April 18, 1935, Section 15 – Uninsured Employer.

Insurance Policy for said year 2016 and is in violation of WAC and does not comply with 11 U.S.C. 1112 (B) (4) (C).

10. According to Section 25 of the WAC, the Manager of the SIF is authorized and ordered to appraise and levy on each employer, annual premiums, which shall be collected semiannually in advanced and divided into fiscal years. Therefore the lack of payment thereof is an infringement of the WAC and deprives the employer (Debtor) of the immunity from claims for damages arising from work related accidents, which is a clear detriment to a Debtor, in that the debtor has neither filed its Annual Payroll Statement Form for year 2016.

11. As to the lack of immunity, Section 20 of WAC provides that:

"When an employer insures his workmen or employees in accordance with this Act, the right herein established to obtain compensation shall be the only remedy against the employer, even in those cases where maximum compensations and benefits have been granted in accordance thereof; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this Act, the liability of the employer is, and shall continue to be, the same as if this Act did not exist."

12. The Worker's Compensation Insurance are therefore, an actual necessary cost or expense of preserving the estate, and a statutory requirement for continuing doing business in Puerto Rico, even while under the protection of the Bankruptcy code. The SIF purports that given the nature of Debtors business, the protection of the immunity from liability provided by WAC is always necessary as a means of preserving the Estate.

13. As a matter of fact, the "Operating Guidelines and Reporting for Debtors in Possession", issued by the Office of the U.S. Trustee, requires proof of

insurance, including coverage for worker's compensation, which the Debtor in the instant proceeding has not complied with year 2016 and the Workmen's Compensation Insurance Policy for said year does not exist as required by WAC.

14. It is requested of this Honorable Court that the amount determined that is indebted in 2016 be ordered to be paid by Debtor immediately once determined and that if said Debtor does not pay the indebtedness of year 2016 immediately, that the present bankruptcy proceeding be dismissed under 11 U.S.C. 1112 (B) (4) (C) and/or converted to a Chapter 7 proceeding, in that the debtor is presently uninsured as required by WAC for said year 2016. That the SIF be granted 60 days in order to complete the audit of years 2015 and 2016.

WHEREFORE it is prayed of this Honorable Court that the present motion be granted permitting the audit of debtor by the SIF as herein prayed for as to year 2015 and 2016; that the debtor should go before the SIF and present the documents informed in paragraph 5 aforementioned, whereby the SIF is to be informed as to the salaries the debtor paid to its employees in years 2015 and 2016; the debtor should obtain immediately a Patron Workmen's Compensation Insurance Policy for year 2016; that the SIF be granted 60 days to comply and inform the Honorable Court as to the audit requested, as well as any other remedy this Honorable Court may deem proper and just.

NOTICE OF RESPONSE TIME

Within Twenty One (21) days after service as evidence by the certification – and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail – any party against whom this request has been served, or any other party to the action who objects to the relief sought herein, must serve and file an objection or other appropriate response to this request with the Clerk's Office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is

timely filed within the time allowed herein, the paper will be deemed unopposed and the court may approve the same without further notice of hearing unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice otherwise requires.

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on this same date, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the debtor through his attorney, Isabel M Fullana, Esq., Monsita Lecaroz Arribas, Office of the US Trustee; and to all participants of CM/ECF, also a true copy was sent by U.S. regular mail, postage prepaid, to all non-CM/ECF participants.

In San Juan, Puerto Rico, July 11, 2016.

RESPECTFULLY SUBMITTED.

/s/ Wally de la Rosa Vidal

Wally de la Rosa Vidal

USDC-PR No. 113012

PO Box 365028

San Juan, PR, 00936-5028

Tel. (787) 793-5959 Ext. 5908/5515

Email: WDelaRosa@cfse.gov.pr

CFSE-3047
sept. 2009

Estado Libre Asociado de Puerto Rico
Commonwealth of Puerto Rico
CORPORACION DEL FONDO DEL SEGURO DEL ESTADO
STATE INSURANCE FUND CORPORATION
P.O. Box 365028 San Juan P.R. 00936-5028
G.P.O. Box 365028 San Juan P.R. 00936-5028

CERTIFICACION DE DEUDA
CERTIFICATE OF DEBTS

Número de Certificación: 201765319

Certificate Number

Fecha de Certificación: 8/7/2016 1:44:27PM
Certificate Date 8-7-2016 1:44 pmFecha de Expiración: 31-12-2016 12:00 am
Expiration Date 31-12-2016 12:00 amEmitido por: rdelvalle
Emitted by

Certifico que de acuerdo a nuestros récords del día 08-7-2016 1:44 pm
I hereby certify that as of 08-Jul-2016 1:44 pm

el patrono HORNED DORSET PRIMAVERA HOTEL
the employer

Adeuda la suma de \$54,574.65 por los siguientes conceptos:
Owes the amount of \$54,574.65 for the following concepts:

Favor de pagar dicha deuda. Este documento constituye una gestión de cobro; excepto en casos de Quiebra.

SISTEMA SEGUROS INSURANCE SYSTEM			
NUMERO DE POLIZA <u>POLICY NUMBER</u>	AÑO <u>YEAR</u>	NUMERO DE CARGO <u>NUMBER OF CHARGES</u>	CANTIDAD <u>AMOUNT</u>
			0.00
8723001717	1987	88033	1,098.14
8713000037	2014	14190	11,692.75

Esta Certificación no será válida sin el sello oficial o código de verificación electrónica y no representará un relevo de responsabilidad por aquellas deudas con la CFSE, pendientes de ser procesadas al momento de la emisión de este documento.

This certification is not valid without the official stamp or Electronic verification code. It does not represent a release for any pending debts with the State Insurance Fund, waiting to be processed at the time of emitting this document.

Para validar la información contenida en este certificado, favor acceder a:
To validate the information in this certificate, please access the URL:

www.cfse.gov.pr

08-7-2016
8-Jul-2016

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CARLOS COLÓN ROSARIO

Jefe. Div. Recaudaciones o su Rep. Autorizado
Chief Collection Division Representative

EXHIBIT 1

CFSE-3047
sept. 2009

Estado Libre Asociado de Puerto Rico
Commonwealth of Puerto Rico
CORPORACION DEL FONDO DEL SEGURO DEL ESTADO
STATE INSURANCE FUND CORPORATION
P.O. Box 365028 San Juan P.R. 00936-5028
G.P.O. Box 365028 San Juan P.R. 00936-5028

CERTIFICACION DE DEUDA
CERTIFICATE OF DEBTS

8713000037	2013	13093	14,642.87
8713000037	2012	12075	14,642.87
8713000037	2011	11135	12,498.02
TOTAL DEUDA EN PRIMA TOTAL DEBT IN PREMIUM			\$54,574.65 \$54,574.65
SISTEMA CUENTAS POR COBRAR ACCOUNT RECEIVE SYSTEM			
NUMERO DE FACTURA <u>INVOICE NUMBER</u>	CANTIDAD <u>AMOUNT</u>		
	0.00		
TOTAL DEUDA EN FACTURAS TOTAL DEBT IN INVOICES	\$0.00 \$0.00		

Esta Certificación no será válida sin el sello oficial o código de verificación electrónica y no representará un relevo de responsabilidad por aquellas deudas con la CFSE, pendientes de ser procesadas al momento de la emisión de este documento.

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08-7-2016
8-Jul-2016
Page 2 of 3


CARLOS COLÓN ROSARIO

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Chief Collection Division Representative

CFSE-3047
sept. 2009

Estado Libre Asociado de Puerto Rico
Commonwealth of Puerto Rico
CORPORACION DEL FONDO DEL SEGURO DEL ESTADO
STATE INSURANCE FUND CORPORATION
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G.P.O. Box 365028 San Juan P.R. 00936-5028

CERTIFICACION DE DEUDA
CERTIFICATE OF DEBTS

Observación:
Observation

NO MANTIENE POLIZA PERMANENTE VIGENTE. Esta certificación se considera un documento oficial de la Corporación del Fondo del Seguro del Estado. Sin embargo, la información incluida en la misma podría estar sujeta a cambios y correcciones debido a la constante actualización de nuestras bases de datos, dilación o errores en la información provista por patronos y/o lesionados y/o dilación o errores en el proceso de recopilación y publicación de datos. En caso de tener dudas o interesar corroborar el contenido de esta certificación, debe comunicarse con y/o visitar la Oficina Regional de la Corporación del Fondo del Seguro del Estado más cercana.

Esta Certificación no será válida sin el sello oficial o código de verificación electrónica y no representará un relevo de responsabilidad por aquellas deudas con la CFSE, pendientes de ser procesadas al momento de la emisión de este documento.

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08-7-2016
8-Jul-2016
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CARLOS COLÓN ROSARIO

Jefe. Div. Recaudaciones o su Rep. Autorizado
Chief Collection Division Representative

NUM.POLIZA/AÑO: 8713000037 - 2011 FECHA 2016/07/08 HORA 13:36
 NUM CARGO 11135
 STATUS DEUDA 3 - SERV. LEGALES
 NOMBRE DEL PATRONO: HORNED DORSET PRIMAVERA
 HOTEL

PRIMA BRUTA FINAL	2011			21,665.72
SISTEMA MERITO	30 BONI	(-)	6,499.72	
CREDITO AGRICOLA		(-)	.00	
PRIMA NETA FINAL				15,166.00
AD AÑO ANTERIOR	2010	(+)	3,622.09	
AD PROXIMO AÑO	2012	(-)	.00	
PRIMA A PAGAR				18,788.09
PAGADA		(-)	6,290.07	
CR AÑO ANTERIOR	2010	()	.00	
CR PROXIMO AÑO		(+)	.00	
CR L.E.A.		(-)	.00	
BALANCE FINAL				12,498.02 (+)

DEVOLUCION .00

FP3-SALIDA PF4-DATOS PRELIM

ESTADO DE SITUACION - DATOS FINALES
Case:15-03837-ESL11 Doc#:211 Filed:07/11/16 Entered:07/11/16 10:10:52 Desc: Main Document Page 11 of 14
FECHA 2016/07/08 HORA 13:36
NUM.POLIZA/AÑO: 8713000037 2012 FEC.REND. 2012-07-20 NUM CARGO 12075
STATUS DEUDA -
NOMBRE DEL PATRONO: HORNED DORSET PRIMAVERA
HOTEL
PRIMA BRUTA FINAL 2012 20,918.38
SISTEMA MERITO 30 BONI (-) 6,275.51
CREDITO AGRICOLA (-) .00
PRIMA NETA FINAL 14,642.87
AD AÑO ANTERIOR 2011 (+) .00
AD PROXIMO AÑO 2013 (-) .00
PRIMA A PAGAR 14,642.87
PAGADA (-) .00
CR AÑO ANTERIOR 2011 () .00
CR PROXIMO AÑO (+) .00
CR L.E.A. (-) .00
BALANCE FINAL 14,642.87 (+)
DEVOLUCION .00
FP3-SALIDA PF4-DATOS PRELIM

NUM.POLIZA/AÑO: 8713000037 - 2013 FEC.REND.: 1901-01-01 NUM CARGO 13093

NOMBRE DEL PATRONO: HORNED
HOTEL STATUS DEUDA -
DORSET PRIMAVERA

PRIMA BRUTA FINAL	2013			21,422.31
SISTEMA MERITO	30 BONI	(-)	6,426.69	
CREDITO AGRICOLA		(-)	.00	
PRIMA NETA FINAL				14,995.62
AD AÑO ANTERIOR	2012	(+)	.00	
AD PROXIMO AÑO	2014	(-)	352.75	
PRIMA A PAGAR				14,642.87
PAGADA		(-)	.00	
CR AÑO ANTERIOR	2012	()	.00	
CR PROXIMO AÑO		(+)	.00	
CR L.E.A.		(-)	.00	
BALANCE FINAL				14,642.87 (+)
DEVOLUCION				.00
FP3-SALIDA	PF4-DATOS PRELIM			

ESTADO DE SITUACION - DATOS FINALES
Case:15-03837-ESL11 Doc#:211 Filed:07/11/16 Entered:07/11/16 10:10:52 Desc: Main Document Page 13 of 14
FECHA 2016/07/08 HORA 13:36
NUM. POLIZA/AÑO: 8713000037 2014 FEC. REND. 1901-01-01 NUM CARGO 14190
STATUS DEUDA -
NOMBRE DEL PATRONO: HORNED DORSET PRIMAVERA
HOTEL
PRIMA BRUTA FINAL 2014 16,200.00
SISTEMA MERITO 30 BONI (-) 4,860.00
CREDITO AGRICOLA (-) .00
PRIMA NETA FINAL 11,340.00
AD AÑO ANTERIOR 2013 (+) 352.75
AD PROXIMO AÑO 2015 (-) .00
PRIMA A PAGAR 11,692.75
PAGADA (-) .00
CR AÑO ANTERIOR 2013 (-) .00
CR PROXIMO AÑO (+) .00
CR L.E.A. (-) .00
BALANCE FINAL 11,692.75 (+)
DEVOLUCION .00
FP3-SALIDA PF4-DATOS PRELIM

ESTADO DE SITUACION - DATOS PRELIMINARES
 NUM. POLIZA/ANO: 8723001717 - 1987 - FECH. REND. 1901-01-01 NUM CARGO 88033
 NOMBRE PATRONO: HORNED DORSET LA
 FFAC 1901-01-01 PRIMAVERA INC
 SISTEMA DE MERITO : .00 0 DEVOLUCION .00
 AD/CR ANO ANTERIOR: .00 AD CR AGRICOLA .00
 CR/LEY EMPL. AHORA: .00 IND FACTURACION F PRELIMINAR FACT

----- A PAGAR -----			*----- PAGADO -----*			*- BALANCE -*
SEM	FECHA	IMPOSICION	PAGADO	FECHA	REMESA	
1	87-04-06	2,802.14	2,802.14	87-04-06	87280	.00
2	87-10-06	2,802.13	2,802.13	87-04-06	87280	.00
3	88-04-06	4,392.53	3,294.39	93-11-03	94126	1,098.14

TOTAL: 9,996.80 8,898.66 1,098.14

DETALLE : 9,996.80 8,898.66

LEY EMPLEOS AHORA: DESDE 1901-01-01 HASTA 1901-01-01

AVISO-> POLIZA NO HA SIDO LIQUIDADADA

PF2-RIESGOS PF3-SALIDA PF5-DAT FIN PF6-PAGOS PF7/PF8-OJEAR PF9-LOCAL